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10 Attorneys for Defendants  
11 ANTARA BIOSCIENCES, INC.,  
12 MARC R. LABGOLD and DANA ICHINOTSUBO

13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 IZUMI OHKUBO,

16 Plaintiff,

17 v.

18 ANTARA BIOSCIENCES, INC.  
19 MARC R. LABGOLD AND DANA  
20 ICHINOTSUBO,

21 Defendants.

Case No.: C07 06354 JW

**DECLARATION OF DEFENDANT,**  
**MARC R. LABGOLD, Ph.D. IN**  
**SUPPORT OF DEFENDANTS'**  
**MOTION TO DISMISS**  
**COMPLAINT**

Date: April 7, 2008  
Time: 9:00 a.m.

Honorable James Ware  
Courtroom 8

[Notice of Motion and Motion to Dismiss  
Complaint, [Proposed] Order,  
Certification of Interested Entities or  
Persons, and Declaration of Dana  
Ichinotsubo, filed concurrently herewith]

Complaint Filed: December 14, 2007

1 I, Marc R. Labgold, do hereby declare as follows:

2 1. I have personal knowledge of the facts set forth herein and could  
3 competently testify if required to do so.

4 2. I am member of the Bar District of Columbia. I am also a member  
5 of the Bar of other federal appellate and district courts.

6 3. I make this declaration in support of the motion to dismiss filed by  
7 Defendants, Antara Biosciences, Inc. ("Antara"), Dana Ichinotsubo ("Ichinotsubo"),  
8 and myself (collectively, "Defendants"), against plaintiff, Izumi Ohkubo ("Ohkubo").

9 4. I am a citizen and resident of the Commonwealth of Virginia.

10 5. Since its inception, I have served as an officer and director of  
11 Antara.

12 6. Ichinotsubo is an officer and director of Antara and K.K. Eurus  
13 Genomics ("Eurus"), which is located in Tokyo Japan. Ichinotsubo is a citizen and  
14 resident of the State of Hawaii.

15 7. It is my understanding that Okubo is a Japanese citizen and  
16 resident.

17 8. It is my understanding that Toshiaki Suzuki ("Suzuki") is a  
18 Japanese citizen and resident. He is an officer, director and/or shareholder of Genesys  
19 Technologies Inc., a Japanese corporation.

20 9. In early 2006, Ichinotsubo and I were introduced to Okubo by  
21 Suzuki. That meeting took place in Mr. Ohkubo's offices in Tokyo Japan. Suzuki  
22 had previously discussed with Ohkubo the possible investment in Antara and he  
23 solicited Ohkubo's investment. I have no knowledge of what was actually said or not  
24 said by Suzuki to Ohkubo. Suzuki was not authorized to make any representations or  
25 statements on Antara's or Eurus' behalf and was not Antara's authorized agent or  
26 employee. It is my understanding that Suzuki had agreed to identify potential  
27 investors in return for a commission. I learned from Ichinotsubo and then Suzuki, that  
28 Ohkubo intended to invest in Antara, but that he wanted to meet us first.

1           10. Okubo signed the Investment Contract with Antara and Eurus in or  
2 around March 2006 in Japan. As Ex. C to Okubo's complaint shows, the original  
3 executed Contract was in the Japanese language.

4           11. It is my understanding that on or about December 26, 2006,  
5 Ohkubo *et al.* filed suit against Eurus in the Tokyo District Court, Tokyo, Japan.  
6 From a review of the documents filed in that case, that suit is premised upon the same  
7 Investment Contract, facts and circumstances, and seeks, among other things, to have  
8 Eurus repurchase his shares in Antara.

9           12. In the event that the case before this Court is dismissed, I hereby  
10 agree to submit to the jurisdiction of the Tokyo District Court for an action brought  
11 against me by Okubo.

12           13. While there is no question that Antara is a signatory to the  
13 Investment Contract in question, and as such, is subject to the jurisdiction of the  
14 Tokyo District Court, Antara's Board of Directors has agreed that Antara submits to  
15 the jurisdiction of the Tokyo District Court if Okhubo were to bring a corresponding  
16 action against Antara in the Tokyo District Court.

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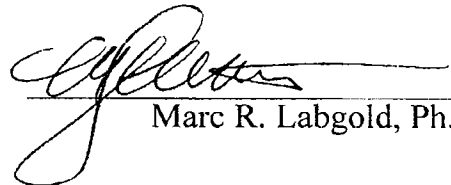
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1           14. Critical relevant evidence is located in Japan. In particular, a key  
2 witness and central figure to the alleged acts, Suzuki, and his corporation, Genesys,  
3 are located in Japan and outside the inherent jurisdiction of this Court. Defendants  
4 would be significantly disadvantaged by not having the ability to bring this witness  
5 forward or compel his production of relevant information. In marked contrast,  
6 evidence required from the named Defendants will be within the Japanese court's  
7 jurisdiction.

8           I declare under the penalty of perjury that the foregoing is true and  
9 correct.

10 Executed on February 12<sup>th</sup>, 2008, at Renton, VA.

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14 Marc R. Labgold, Ph.D.  
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**PROOF OF SERVICE**

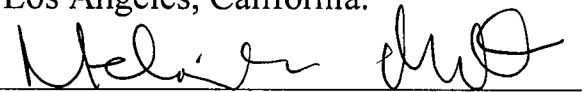
I, Melinda Montero, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 19, 2008, I served the document(s) described as **DECLARATION OF DEFENDANT, MARC R. LABGOLD, Ph.D. IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COMPLAINT** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

- ☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.
- ☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service: ] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.
- ☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.
- ☐ **BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT:** On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.
- ☒ **BY ELECTRONIC MAIL:** I transmitted the documents listed above, electronically, via the U.S.D.C. CM/ECF website as indicated on the attached service list.
- ☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 19, 2008, at Los Angeles, California.

  
Melinda Montero

**Izumi Ohkubo v. Antara Biosciences, Inc., et al.**  
**United States District Court Northern District, San Jose Division**  
**Case No. C07 06354 JW**

**SERVICE LIST**

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